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Supreme Court, U.S.
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No. 04-1283

IN THE

Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, Administrator, on Behalf of Estate of BRADFORD WAYNE GALAWAY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented by this case is, whether federal law permits a spouse, as part of a negotiated, agreed decree of divorce, to voluntarily, willingly, and knowingly enter into a waiver of all entitlement to ERISA life insurance benefits stemming from the employment of the spouse she is divorcing, accept and keep all of the consideration securing that waiver, and upon the subsequent death of the divorced spouse, renege on the agreement and collect the life insurance benefits.

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SUMMARY OF ARGUMENT

Federal statutory law does not address this question, so federal common law must provide the rule of decision, and in order to support the statutory policies declared by Congress, that rule of decision must not permit those who, in return for consideration, renounce all rights to life insurance benefits to claim those benefits.

ARGUMENT

In the instant case, Bradford Wayne Galaway, Deceased, obtained life insurance benefits through his employment. These benefits were subject to regulation by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 – 1461 (ERISA). He designated his wife at that time, the Petitioner, Kimberlye Finch, as the beneficiary of that life insurance policy. Subsequently, they agreed to divorce. They negotiated the terms of the divorce and entered into an agreed divorce decree, which a court approved. In partial return for concessions made by Mr. Galaway, Ms. Finch relinquished all entitlement to the proceeds of the life insurance policy. Just five months later, before he had changed the designation of the beneficiary of the life insurance policy, Mr. Galaway died in an airplane crash. Whereupon Ms. Finch claimed the life insurance benefits, her promise not to do so, made less than half a year earlier, notwithstanding.[1]

Both the United States District Court for the Northern District of Texas[2] and the United States Court of Appeals for

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[1] Appendix of "Petition for Writ of Certiorari," at page 2a.

[2] Appendix of "Petition for Writ of Certiorari," at page 17a.

the Fifth Circuit[3] ruled that Ms. Finch would have to live up to her promise not to claim title to the life insurance proceeds. She petitions this Court to rule that she does not.

The Respondent, Eddie Lee Galaway, Administrator, on Behalf of the Estate of Bradford Wayne Galaway, believes that this Court should deny the petition for a writ of certiorari because (1) the rulings by the United States District Court and the United States Court of Appeals in this case were correct, and (2) the split on the controlling issue between the United States Court of Appeals for the Sixth Circuit and practically every other reported decision of the issue is not such as warrants the intervention of this Court.

The Petitioner contends that ERISA expressly entitles one to knowingly, willingly, and voluntarily waive all entitlement to ERISA benefits, and then to turn around and successfully claim those same benefits.[4] She bases this contention on her construction of a specific section of ERISA, 29 U.S.C. § 1104(a)(1), which provides:

> Subject to sections 404(c) and (d), 4042, and 4044 [29 U.S.C. §§ 1103(c) and (d), 1342, and 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and

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[3] Appendix of "Petition for Writ of Certiorari," at page 10a.

[4] "Petition for Writ of Certiorari," at pages 10-11.

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

The United States Court of Appeals disagrees with that construction: "Section 1104 defines the fiduciary duties owed by the plan administrator to plan participants and beneficiaries. That section does not either expressly or implicitly purport to establish any methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds."[5]

This Court has rules for correctly construing statutes in circumstances such as these.

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[5] *Manning v. Hayes*, 212 F. 3d 866, 872 (5th Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

One is, "'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute."[6] The title of 29 U.S.C. § 1104 is, "Fiduciary Duties." The title of paragraph (a) of 29 U.S.C. § 1104 is, "Prudent Man Standard of Care." This rule clearly militates in favor of the construction by the United States Court of Appeals for the Fifth Circuit.

Another of this Court's rules for correctly construing statutes in circumstances such as these is: "All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose."[7] This is because, "[The Court] cannot attribute to Congress the intention to . . . open the door to . . . undesirable possibilities."[8] The construction of 29 U.S.C. § 1104(a)(1) advocated by the Petitioner leads to the result that the benefits end up in the possession of the one person on the planet whom all parties to the lawsuit have agreed should not ever have

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[6] *Almendarez-Torrs v. United States*, 523 U.S. 224, 234 (1998), *quoting*, *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R.*, 331 U.S. 519, 528-29 (1947).

[7] *Haggar Co. v. Helvering*, 308 U. S. 389, 394 (1940); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."); *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 394 (1940) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible.").

[8] *American Tobacco Co. v. Patterson*, 456 U. S. 63, 71 (1982).

them – the only person who knowingly and voluntarily waived all title to them. The absurdity of this result dictates that the construction supported by the Petitioner should be avoided, and that the construction of the statute by the United States Court of Appeals for the Fifth Circuit is correct.

Another rule used by this Court to arrive at the correct construction of a statute in circumstances such as these is: "Where congressional intent is discernible – and here it seems crystal clear – we must give effect to that intent."[9] This Court has already determined the express intent of ERISA:

> Section 1001(b) states that the policy of ERISA is "to protect . . . the interests of participants in employee benefit plans and their beneficiaries." Section 1001(c) explains that ERISA contains certain safeguards and protections which help guarantee the "equitable character and the soundness of [private pension] plans" in order to protect "the interests of participants in private pension plans and their beneficiaries."[10]

The construction urged by the Petitioner neither protects the interests of participants in ERISA plans nor guarantees the equitable character of private pension plans. Rather, it deprives workers of ERISA plan benefits that they have earned, first, and bargained to keep, second. An ERISA plan could not be operated in a more unjust or inequitable fashion.

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[9] *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962).

[10] *Boggs v. Boggs*, 520 U.S. 833, 845 (1997). The title of 29 U.S.C. § 1001 is, "Congressional Findings and Declaration of Policy."

So once more, the rules used by this Court to construe statutes forbid the construction of 29 U.S.C. § 1104(a)(1) sought by the Petitioner.

Adopting the construction given to 29 U.S.C. § 1104(a)(1) by the United States Court of Appeals, however, leaves open the question of what ". . . methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds" courts should employ.

"Given th[e] language and history [of ERISA], [This Court] ha[s] held that courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans.'"[11] According to this Court, Congress preferred the degree of uniformity of application and enforcement of ERISA afforded by a combination of (1) the pre-emption of the laws of the various States that conflicted with ERISA[12] and (2) the subsequent development of ". . . a federal common law of rights and obligations under ERISA-regulated plans. . . ."[13]

So to establish rights and obligations under ERISA plans in cases where one waives rights to ERISA benefits, the United States Courts of Appeals for the Fourth,[14]

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[11] *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989).

[12] 29 U.S.C. § 1144 (a).

[13] *Pilot Life Ins. v. Dedeaux*, 481 U.S. 41, 55-56 (1987).

[14] *Estate of Altobelli v. Int'l Bus. Mach.*, 77 F.3d 78, 81-82 (4th Cir. 1996).

Fifth,[15] Seventh,[16] and Eighth[17] Circuits, after determining that ERISA does not address the effect of such a waiver, employ federal common law. The federal common law they fashion uniformly requires those who knowingly and voluntarily promise not to claim ERISA plan benefits to honor their promises. The approach by these Courts of Appeals thereby protects the interests of participants in ERISA plans and maintains the equitable character of those plans by avoiding the absurd result of awarding ERISA benefits to the only party who has voluntarily, willingly, and knowingly disavowed all right and title to those benefits.

As for the construction of 29 U.S.C. § 1104(a)(1) posited by the Petitioner, "The Sixth Circuit is the only circuit to unambiguously employ this minority approach."[18]

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[15] *Manning*, 212 F.3d at 870-71; *Clift v. Clift*, 210 F.3d 268, 270 (5th Cir. 2000); *Brandon v. Travelers Ins.*, 18 F.3d 1321, 1324 (5th Cir. 1994).

[16] *Melton v. Melton*, 324 F.3d 941, 945 (7th Cir. 2003); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275, 280 (7th Cir.) (*en banc*), *cert. denied*, 498 U.S. 820 (1990) ("ERISA is silent on the issue of what constitutes a proper waiver in this situation, . . . When ERISA is silent on an issue, a federal court must fashion federal common law rules to govern ERISA suits.").

[17] *Hill v. A T & T Corp.*, 125 F.3d 646, 648 (8th Cir. 1997) ("The issue of whether and how a divorce decree may divest a person of beneficiary rights is not explicitly considered in ERISA and thus is a question of federal common law."); *Mohamed v. Kerr*, 53 F.3d 911, 914 (8th Cir. 1995), *cert. denied*, 516.U. S. 868 (1995); *Lyman Lumber Co. v. Hill*, 877 F. 2d 692, 693 (8th Cir. 1989) ("None of ERISA's express provisions addresses the issue presented in this case. We therefore must ascertain the proper federal common law principles that should govern.").

[18] *Manning*, 212 F.3d at 872. *But see*, discussion at page 12, n. 1, of "Petition for Writ of Certiorari."

The Petitioner nevertheless advocates for her construction of 29 U.S.C. § 1104(a)(1) on the ground that it leads to a better method of achieving the degree of uniformity of ERISA law that Congress desired than the method selected by Congress for achieving that uniformity – the development of a federal common law of rights and obligations under ERISA.[19]

Even were it true that Congress was unwise in selecting the development of a federal common law of rights and obligations under ERISA as the means for achieving the degree of uniformity it desired, or even if that selection has failed, the fact remains, "The wisdom of congressional approach or methodology is not open to judicial veto."[20] Rather, this Court has proclaimed, "Our individual appraisal of the wisdom or unwisdom of a particular course consciously

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[19] "Petition for Writ of Certiorari," at page 17 ("Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, . . . undermines this goal of uniformity and makes plan administration more difficult and costly, particularly for multi-state employers."); *see also id.*, at page 20 ("The majority rule is not saved by a supposed uniformity among the federal common law rules adopted by various federal courts.").

[20] *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975); *accord*, *Miller v. Youakim*, 440 U.S. 125, 142 n. 21 (1979); *Green v. Frazier*, 253 U.S. 233, 240 (1979) (With the wisdom of such legislation, and the soundness of the economic policy involved we are not concerned. Whether it will result in ultimate good or harm it is not within our province to inquire.); *United States v. Georgia Pub. Serv. Comm'n*, 371 U.S. 285, 293 (1963) ("Whether the federal policy is a wise one is for the Congress and the Chief Executive to determine. Once they have spoken it is our function to enforce their will.").

selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end."[21]

The Petitioner bases her construction of 29 U.S.C. § 1104(a)(1) on the claim that, "Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, . . . makes plan administration more difficult and costly, particularly for multi-state employers."[22] In fact, the adoption of federal common law imposes no additional burden upon ERISA plan administrators.[23] And even if it did, it must be remembered that ERISA was enacted for the benefit of employees, not plan administrators. Finally, an appeal for relief from any such burdens is properly addressed to

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[21] *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194 (1978).

[22] "Petition for Writ of Certiorari," at page 17.

[23] *Brown*, 897 F.2d at 282

> No such additional burdens will be imposed because, under the ERISA statutory scheme, a plan administrator must investigate the marital history of a participant and determine whether any domestic relations orders exist that could affect the distribution of benefits. . . . Our decision only requires plan administrators to continue their current practice of thoroughly investigating the marital status of a participant.

Accord, *Altobelli*, 77 F.3d at 81.

Congress, not this Court.[24] So the claim that the approach adopted by the four United States Courts of Appeals unduly burdens plan administrators does not support the construction of 29 U.S.C. § 1104(a)(1) proffered by the Petitioner.

The Petitioner persists, "To advance all of the important policy goals of ERISA, '[t]he better rule is the one dictated by the statute – to honor the designations on file with the plan documents."[25] This does not take into account, however, the express desire of Congress that ERISA should be construed and applied in a manner that protects the interests of participants in private benefit plans and guarantees the equitable nature of those plans.[26] There is no equity in turning benefits earned by a worker over to the one person the worker does *not* want to have them. Congress has never made justice a trivial policy goal of ERISA. To the contrary, it is perfect and absolute uniformity across the Circuits which is of lesser import.[27]

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[24] *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 124 (1980) ("Thus, petitioners' claim that the Commission's compliance with the requirements of 6 (b) (1) will impose undue burdens on the Commission is properly addressed to Congress, not to this Court."); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is enough that Congress intended that the language it enacted would be applied as we have applied it. The remedy for any dissatisfaction with the results in particular cases lies with Congress and not with this Court. Congress may amend the statute; we may not.").

[25] "Petition for Writ of Certiorari," at page 21, *quoting*, *Altobelli*, 77 F.3d at 83 (Wilkinson, J., dissenting.).

[26] *See* text at footnote 10, *supra*.

[27] *See United States v. Stauffer Chemical Co.*, 464 U.S. 165, 177 (1984) (White, J., concurring) ("Conflicts in the circuits are

(Cont'd)

Finally, the Petitioner contends that this Court must resolve the split between one United States Court of Appeals and one United States District Court, on the one hand, and all other courts, on the other, to avoid "multiplying litigation" across the country.[28] But the decade-long existence of this difference between a couple of federal courts, on the one hand, and all other courts, on the other, actually appears to have generated few reported decisions of the issue. This is probably a function of two factors: (1) It never occurs to most persons who have waived their right to life insurance or other benefits as part of an agreed divorce settlement that they can engage in some legal maneuver whereby they can claim those benefits nonetheless, and (2) Of that small number of persons, an even tinier subset would feel right about attempting such a maneuver. Courts can dispose of the claims of these few people simply and efficiently by summary adjudication, as was accomplished in the instant case. And in the end,

> [R]espondent ha[s] not come forward with any demonstration that [ERISA] litigation [such as this] has been so costly or voluminous that either the [insurance industry] or the courts have been unduly burdened. Nothing but speculation supports the argument that [ERISA] administrators will be so concerned about the risk

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(Cont'd)

generally accepted and in some ways even welcomed. Indeed, were consistency a compelling concern as between circuits, the decision of one circuit would bind the others even in litigation between two entirely different parties. That is not the route the federal courts have followed.").

[28] "Petition for Writ of Certiorari," at page 19.

> of litigation that they will fail to discharge their important responsibilities in an independent and professional manner.[29]

Although a split among the Circuits regarding the construction of 29 U.S.C. § 1104(a)(1) technically exists, it is a split which more closely resembles a split within a single Circuit, in that it can be resolved by the action of a single Circuit.[30] Further, such action is quite possible, given ". . . that even the Sixth Circuit's application of the minority rule has, at times, been less than enthusiastic."[31] And the split in the instant case creates no more uncertainty than the typical split within a Circuit, because with the exception of persons residing in the Sixth Circuit, ERISA plan beneficiaries can be fairly certain that they cannot obtain ERISA benefits that they waive knowingly, voluntarily, and willingly.

Given this nature[32] of the split on the issue presented by the instant case, the petition for a writ seems not to raise a

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[29] *Cannon v. University of Chicago*, 441 U.S. 677, 709-10 (1979).

[30] *Cf.*, *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (*per curiam*) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

[31] *Manning*, 212 F. 3d at 871.

[32] *See Rice v. Sioux City Cemetery*, 349 U.S. 70, 79 (1955)

> "[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and

(Cont'd)

matter of truly national import warranting the time and attention of this Court,[33] a conclusion this Court has repeatedly and consistently reached in the past.[34]

Should the Court feel that even this relatively small conflict is intolerable, however, the Respondent urges this Court to resolve it by granting the application for writ of certiorari and summarily affirming the decision of the United States Court of Appeals for the Fifth Circuit.[35]

(Cont'd)

> in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U. S. 387, 393 (1923).").

[33] *See Superintendent v. Hill*, 472 U.S. 445, 459 (1985) (Stevens, J., dissenting).

[34] *See, e.g., Manning v. Hayes*, 532 U.S. 941 (2001); *Pressly v. Pressly*, 520 U.S. 1263 (1997); *Mohamed v. Kerr*, 516 U.S. 868 (1995); *Brown v. Fox Valley & Vicinity Construction Workers Pension Fund*, 498 U.S. 820 (1990).

[35] *See* S. Ct. Rule 16.1; *see, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (*per curiam*); *compare, Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975).

CONCLUSION

The Respondent requests this Court to deny the petition for a writ of certiorari in this case, or, in the alternative, to grant the petition and to affirm summarily the judgment entered in this case by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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